

# Memorandum

**Date:** May 16, 2017

**To:** David Marshall, Executive Vice Chancellor  
Don Marolf, Chair, Department of Physics  
Kim Adkinson, Assistant Director, President's and Chancellor's Postdoctoral Fellowship Program

**Cc:** Farfalla Borah, Manager, Labor Relations  
Cindy Doherty, Academic Personnel  
Ariana Alvarez, Director & Title IX Officer

**From:** Brian Quillen, Principal Investigative Analyst *BQ*

**Subject:** [REDACTED] Investigative Report (#2016-[REDACTED]) — CONFIDENTIAL

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## I. INTRODUCTION

The University of California is committed to creating and maintaining a community where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of sexual violence and sexual harassment.

### Brief summary of how this case came to the Title IX Office

On 06/08/16, the Title IX and Sexual Harassment Policy Compliance Office (“TIX/SHPC”) received a report filed by the complainant, [REDACTED] (unaffiliated), against [REDACTED]. In her report, [REDACTED] [unaffiliated; hereinafter, “the complainant”] alleged that [REDACTED]. [REDACTED] [employee # [REDACTED] hereinafter, “the respondent”] engaged in sexual assault-penetration while she was in an incapacitated state and unable to consent. On 06/08/16, the TIX/SHPC initiated a formal investigation into the complaint.

The formal investigation included an examination of relevant documentation and interviews, the threshold of evidence being preponderance [of the evidence]; this standard is satisfied if there is a greater than fifty percent chance, even if slight, that the allegation is true. Both the complainant and the respondent were given a full opportunity to present their respective accounts and provide the TIX/SHPC with relevant documentation. Outreach was made to witnesses identified by the involved parties and the TIX/SHPC as possibly having information relevant to the complaint.

### Investigation Chronology

The following is a chronology of the investigation after it was initiated on 06/08/16:

The fact-finding began on 10/06/16 and concluded on 12/23/16. The TIX/SHPC notes the following significant dates:

- Between 06/28/16 and 08/31/16, the TIX/SHPC placed its investigation on hold pursuant to a request from law enforcement.
- Between 08/31/16 and 09/29/16, the TIX/SHPC coordinated information and resources with the complainant.
- On 10/06/16, the TIX/SHPC sent notice to both parties that it was investigating the reported incident.
- On 10/11/16, the TIX/SHPC met with the respondent and provided her with a copy of the allegations made against her and explained her rights and options under University policy.
- On 11/08/16, the TIX/SHPC conducted a verbal interview of the respondent to receive her response to the complaint.
- On 12/13/16, the TIX/SHPC received a written impact statement from the complainant.
- On 12/20/16, the TIX/SHPC conducted a follow up interview with the complainant and received her written statement on 12/23/16.
- The TIX/SHPC notified both parties of the delay in completing the investigation in the 60-business day timeframe, explaining that changes in office personnel and staffing caused the delays. On 03/06/17, the TIX/SHPC notified each party of the steps taken in order to minimize the delays and address any impact.

As of the date of this report, the TIX/SHPC has not received any additional information from the complainant or respondent related to the claims made within this complaint.

Throughout the fact-finding, the TIX/SHPC coordinated with the Title IX office at the complainant's home campus, [REDACTED]. The scope of the coordination was limited to accommodations and interim measures.

## **II. EXECUTIVE SUMMARY**

The complainant alleged that the respondent sexually assaulted her when, on 04/16/16, she penetrated her vagina while she was incapacitated and unable to consent. The respondent stated that the complainant and her engaged in consensual sexual activity, but denied penetrating her vagina. Based on a review of the evidence learned during the course of this investigation, the TIX/SHPC found that it is more likely than not that the respondent sexually assaulted the complainant by engaging in penetrative sexual activity while she was incapacitated and unable to consent. The TIX/SHPC finds that this allegation is **substantiated**.

## **III. SUMMARY OF ALLEGATIONS AND APPLICABLE POLICIES**

### Allegation Investigated

1. That the respondent committed sexual violence against the complainant when:
  - a. On or around 04/16/16, she sexually assaulted the complainant by deliberately causing her to be incapacitated and intentionally taking advantage of her incapacitation by penetrating her vagina while she was in an incapacitated state and unable to consent.

Based on the incident date of this complaint, the TIX/SHPC used the University's Sexual Harassment and Sexual Violence Policy (version dated 01/01/16) to assess the reported behavior.

In the University's Sexual Harassment and Sexual Violence Policy (version dated 01/01/16), sexual violence includes sexual assault-penetration, sexual assault-contact, relationship (dating and domestic) violence, and stalking. The policy defines sexual assault-penetration and consent as the following:

*Sexual Assault – penetration: Without the consent of the Complainant, penetration, no matter how slight, of the vagina, anus, or mouth by a penis; or the vagina or anus by any body part or object.*

*Consent is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of both persons an affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence, do not alone constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent prior to conduct).*

*The Respondent's belief that the Complainant consented shall not provide a valid excuse where:*

1. *The Respondent's belief arose from the Respondent's own intoxication or recklessness;*
2. *The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or*
3. *The Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:*
  - a. *Asleep or unconscious;*

- b. Due to the influence of drugs, alcohol, or medication, unable to understand the fact, nature, or extent of the sexual activity; or
  - c. Unable to communicate due to a mental or physical condition.

In determining whether or not sexual violence occurred, the above definitions of sexual assault-penetration and consent and the totality of circumstances were considered.

As it applies to the allegation, the TIX/SHPC examined three elements: (1) the respondent's alleged penetration of the complainant; (2) the complainant's alleged state of incapacitation; and, (3) the respondent's knowledge of the complainant's incapacitation.

#### **IV. EVIDENCE**

##### **Complainant's Statement**

The complainant reported that the incident took place at the annual academic retreat in 2016 for the [REDACTED] specifically the two-year [REDACTED]

[REDACTED] The complainant identified that the retreat took place from April 15-17, 2016 at the [REDACTED]

On Saturday 04/16/16, the complainant said that the current [REDACTED] the mentors, the administrators, and previous fellows were present for the events. In the evening, at around 5:00pm, the complainant said they attended social and networking events. She estimated that the events lasted through around midnight. She described how the [REDACTED] were staying in cabins around the main center.

She indicated that, at 5:00pm, there was a cocktail reception in the main conference center, followed by dinner and performances from 8:00-10:00pm. The complainant said there was a dance party from 10:00-12:00midnight. She said she attended all of the events, staying mostly with the [REDACTED] in the humanities field because she didn't know a lot of the people. She noted that alcohol was served, which included an open bar at the reception and dinner. She estimated that she had one to two glasses of wine during the cocktail reception. She described how she ate the food served at dinner and drank "a couple more glasses of wine" over the course of the dinner. The complainant stated she didn't drink anything during the performances, but might have been drinking from a residual drink from dinner. Following the performances, she said she drank more from the open bar during the dance party from 10:00-12:00am. She recalled that the program administrators were serving the drinks from the open bar.

The complainant recounted how she had been steadily eating and drinking water the whole night, but felt “pretty buzzed.” She stated she was “coherent” and abled to have “work conversations” with her colleagues. At around midnight, the complainant recalled that a group of [REDACTED], including her, went to [REDACTED]. She described how they walked to the cabin, which was in close proximity to the main conference area. She estimated that they walked for around 5 minutes.

When asked if she recalled the respondent being present or near her while she drank that night, the complainant remembered seeing the respondent at around 10:00pm at the dance party because the respondent was dancing with one of her male friends. She noted that the venue was “very dark,” limiting what she could observe. The complainant said she was at the bar for that part of the evening, speaking with a colleague. During that time, she felt a “peripheral sense” that the respondent was to her left at the bar. She stated the first time she spoke with the respondent was later in [REDACTED], recalled how the respondent and Witness 6 were “standing too close for normal” conversation.

When asked if her drink was in her hand or in her sight during the time she was drinking, the complainant said yes. She recalled how, during a conversation with a male colleague, she might have left her wine glass sitting on the bar, but she wasn’t sure about this memory.

When asked if she was on any medication that night, the complainant said she typically took blood pressure medication, but had stopped the medication two days before the conference. She remarked that stopping the medication probably made her feel a little weird.

When asked what she drank that evening, the complainant said she only drank white wine, specifically pinot grigio.

Upon arriving at the cabin, the complainant recalled “feeling weird” and “very very strange.” She explained how she felt her “consciousness going in and out.” She remembered talking with people then blacking out or blanking. She recalled speaking with two female fellows who she didn’t know prior to that night. She noted that they spoke near the back of the cabin close to the stairs. The complainant identified the two female fellows as the respondent and Witness 6. She described how Witness 6 was “acting strange” and “swaying.” The complainant noted that Witness 6 was touching, hugging, and rubbing her arms.

During her conversation with the respondent and Witness 6, the complainant stated she told them something along the lines of, “I’m done and need to leave.” She recalled how Witness 6 responded by repeating multiple times, “no, you’re not going to leave.” At this point in the night, the complainant states she “felt like [she] couldn’t make [her] body move,” which made her start to feel “scared.” The complainant indicated that her memory was “patchy” from this point forward in the night.

The complainant indicated that the next thing she remembered was being in a bed upstairs in the cabin. She recalled how she was sitting next to the respondent, and Witness 6 was “around” and present upstairs too. The complainant recounted how she went to the bathroom because she felt “very very ill” and began to vomit “a lot.” She described how she vomited “many times, a lot, over a long period” of time. While she was in the bathroom vomiting, she recalled seeing Witness 6 going in and out of the bathroom. She stated that the respondent was with her the whole time as she vomited, described how it seemed like the respondent was “hanging out” in the bathroom. The complainant reiterated that she only recalled vomiting at this point. She said she was talking with the respondent, but had no memory of what was said in the conversation.

After she finished vomiting, the complainant recounted how the respondent was standing at the door of the bathroom and then “rushed her.” She explained that the respondent appeared to “run across the bathroom” and began kissing her. The complainant described the respondent as “aggressive.” She stated she couldn’t remember much about this interaction because she was going in and out of consciousness. She recalled sitting on the floor and the respondent closed the door to the bathroom, then she only remembers “black space.” She described experiencing “very very brief moments of lucidity.” During those moments, the complainant stated she felt like she “couldn’t make her body do anything.” She recalled feeling like “something hurt” her and remembered “feeling pain,” but she indicated she wasn’t “conscious of what was happening.”

The complainant then recalled hearing the door open. The next thing she remembered was sitting on the floor near the sink. She indicated she had a vague memory of two people coming up to the use the bathroom.

Following the incident, the complainant remembered leaving with the respondent and Witness 6 to walk back to her cabin. At that point, she recalled feeling “very very very dizzy.” She said she couldn’t walk back alone and had trouble standing. She indicated that she couldn’t read the cabin signs to identify her cabin number. The complainant described how the respondent and Witness 6 left her in the cabin and she fell asleep without changing her clothes.

The next morning, the complainant woke up and felt “horrible.” She went to use the bathroom and shower and felt like “absolute hell.” She described how she felt “a lot of pain” and was bleeding from her vagina, which made her feel “very scared.” She stated her whole body “felt bad.” She said she missed breakfast and the first session of the day and decided to just try to get through the day. During the day, the complainant indicated she experienced “profuse bleeding” until around 5:00pm. She estimated that she arrived back at her home at around 10:00pm and was confused and not sure of what had happened.

When asked about the bleeding, the complainant explained that it appeared different than period blood, describing it as “thin and light colored.” She further commented that she didn’t have any pads or tampons because her cycle didn’t align with the timing of the conference. She described how she had to ask her colleagues for pads and even then the bleeding was so profuse that she had to use multiple pads. When asked about the pain, the complainant indicated that the pain was specific to her vagina.

The complainant stated she didn’t remember drinking enough to make her “violently ill.” She further commented how drinking too much feels and this experience felt different. The Monday after the conference, she said she went to see a doctor. She stated she was still bleeding from her vagina at that time, and the doctor performed a pelvic exam on her. Following the doctor appointment, the complainant indicated that she slept through the rest of Monday and all day Tuesday. Then, on Wednesday, she called the rape/trauma center. She indicated she was still in pain and was having trouble urinating at this time. She recalled receiving a medical exam referral. The complainant stated she kept the clothes she wore during the incident that past Saturday, noting that her pants, blouse, and boots all had blood on them. When asked about the pelvic exam, the complainant said it showed swelling in her vagina. She noted that the doctor remarked, “it looks like some sort of object was in there.” The complainant said no cuts were identified in the exam.

When asked about any contact with the respondent or Witness 6 following the conference, the complainant indicated that the respondent added her as a Facebook friend and Witness 6 added her on “academia.edu.” She said she responded to their messages as if nothing happened. She recalled the respondent asking her at what time she got to bed, to which she wrote, “2:00 am.” The respondent then indicated that she got to bed at around 4:00am the night of the incident. The complainant explained that she accepted their Facebook friend request so that she could see who they were, after which she unfriended them. She noted that Witness 6 was a [REDACTED] and the respondent was a [REDACTED]. When asked for their full names, the complainant identified them as Witness 6 and the respondent.

When asked who she knew of the [REDACTED] in [REDACTED] the night of the incident, the complainant recalled that Witness 1, a [REDACTED] at one point joined the conversation between her, the respondent, and Witness 6. She explained how she had lunch with Witness 1 on Sunday after the incident, and Witness 1 commented on Witness 6’s behavior on the night in question. According to the complainant, Witness 1 commented that Witness 6 appeared to be hugging and touching the complainant a lot.

When asked to describe the [REDACTED], the complainant indicated that [REDACTED] didn’t teach. She explained that they focused on researching and publishing in preparation for job recruitments in academia. She indicated that Witness 6 was one year into the two year program.

When asked to describe the impact of the incident, the complainant described it as “hard” and “horrible” to deal with the blood, pain, vomit, and medical exams. She remarked that her body “needed to heal.” She mentioned that she had to take PTO time from her [REDACTED]. She identified feeling “completely mortified,” “embarrassed,” and “humiliated. She expressed how she felt haunted because she couldn’t remember what happened in the bathroom that caused her to bleed. The complainant added that she was scared to go to subsequent [REDACTED]. She stated she couldn’t imagine working for a UC campus after this even though the respondent was in a different field.

When asked about her desired outcome, she stated she wanted the respondent and Witness 6 to know that what happened was wrong and that she was hurt by their conduct.

### **Respondent’s Statement**

The respondent denied the allegation, stating that the “allegation is not true.” She stated she never gave the complainant any substances and clarified that she didn’t provide her with alcohol, drugs, or “even water” in order to get her to a state of incapacitation. She stated that in all interactions with her, the complainant was coherent (walking, talking normal), and the respondent did not try to get her to drink anything. When referring to the complainant, the respondent stated that “in no way did she seem incoherent.” In response to the allegation that the respondent sexually assaulted the complainant and penetrated her, the respondent stated “I did not penetrate her” during their physical interaction.

When asked what, if any, interaction she had with the complainant during the conference reception, the respondent stated that she did not remember interacting with the complainant before the after party. She explained that she had a workshop that day and left the conference to go running. She then took a shower and went to dinner. She said there was a general performance after dinner, and she remembers dancing, but does not remember seeing the complainant. She stated that there were drinks and then music. She explained that she and some other [REDACTED] went to another reception room where they drank wine and talked to various people, but she could not recall if the complainant was there. The respondent stated that she then went around asking people to dance.

When asked to talk about the after party and her decision to attend, the respondent explained that the director of the program, Witness 3, said they could continue the party in their [REDACTED]. The respondent’s roommate from [REDACTED] did not go, so she went to the party with other [REDACTED]. The respondent drew a diagram of the layout of the [REDACTED]. She stated that the cabin did not have a separate bedroom, but instead had a loft with an upstairs bedroom. There were couches downstairs and many people were around. She explained that she sat on the couch with Witness 6 who was talking to other people nearby. The respondent recalled that the complainant sat down next to the respondent on the couch and started talking to her.

In relation to the complainant's demeanor, the respondent indicated that she couldn't remember, but seemed to recall that the complainant had been drinking beer at the time. She thought there was a beer in her hand, but she was not positive.

The respondent said that the complainant asked her if she and Witness 6 were a couple because she had seen them dancing together. The respondent told the complainant that she was single and straight. At this comment, the respondent stated that the complainant addressed her and asked "why are you not dating?" The respondent explained that she had been in a long relationship before, and the complainant told her that she was in a relationship but was currently separated. The respondent then stated that Witness 6 asked the complainant how things were going with her [REDACTED], to which the complainant replied, "Why do you assume that I'm straight?". The complainant then talked about the [REDACTED]

The respondent recounted how the complainant mentioned feeling "bloated" from dinner and beer. In response to this comment, the respondent said she told the complainant to switch to wine to avoid bloating. At that point, the respondent indicated the complainant placed her beer down. The respondent commented that there wasn't any alcohol nearby and didn't remember seeing the complainant drinking anymore after that. She stated that she had a glass of wine, but did not give any to the complainant. The respondent stated the complainant was not acting drunk at that time, noting that her conversations were "logical" and "fully coherent."

The other conversation the respondent remembered having with the complainant was when the complainant and her both needed to use the bathroom. She said she couldn't recall why the complainant needed to go though. The respondent said the bathroom downstairs was busy, so they both went upstairs. She noted that Witness 6 stayed downstairs and only came upstairs later.

The TIX/SHPC indicated that witnesses reported seeing Witness 6 going upstairs with her and the complainant. When asked about that information, the respondent said, "That is a complete lie." The respondent then stated, "Witness 6 did come upstairs but it was after the physical interaction with [the complainant] and I." She reiterated that whoever reported that Witness 6 went upstairs with her and the complainant was "lying".

In relation to the information that the complainant told her that she was sick, the respondent said she didn't remember her saying that. She only recalled the complainant indicating that her stomach hurt. The respondent said that the complainant told her that she was feeling bloated. In response to the witness information that the complainant specifically said she was feeling sick, the respondent suggested that it could have been her stomach hurting that led people to believe that the complainant was feeling sick.

When asked if there were any other interactions between the conversation on the couch and the bathroom, the respondent said there were no interactions and “no flirting”. Aside from conversations about exes where the respondent informed the complainant that her [REDACTED], the respondent said they did not interact.

When asked about any physical displays of affections during their interactions before heading upstairs, the respondent said she and the complainant both seemed to talk with their hands. She said that the complainant told Witness 6 that they must be the cutest one in her family. The respondent said none of their interactions downstairs left her with the impression that the complainant was hitting on her.

The respondent said that there were no other interactions with the complainant unless she was in the group of people that the respondent danced with at the reception prior to the after party. She did not remember interacting with the complainant before their conversation on the couch at the after party though.

The TIX/SHPC indicated that there were witnesses who said that they saw other interactions between her and the complainant during the after party. When asked about that information, the respondent reiterated that she only recalled talking with the complainant on the couch before going upstairs.

When asked if she had her arms around the complainant’s waist at any point during the after party, the respondent said no. When asked if she recalled speaking with the complainant and Witness 3 while standing near the cabin entrance/exit, the respondent had no recollection of such an interaction. The respondent said she didn’t remember putting her hands on the complainant while downstairs.

The respondent described the upstairs loft area of the cabin. She said there was a bed and a bathroom, and a little hallway or closet between the bathroom and the loft. She said that the only door with a lock on it was the bathroom. When the respondent came out of the bathroom, she said the complainant was sitting on the bed. She couldn’t recall if the complainant went to the bathroom. The respondent recounted how the complainant told her she was sad because [REDACTED] [REDACTED]. The respondent told her she understood and related to her about her [REDACTED] At this point, the respondent said she leaned in to hug the complainant, but the complainant leaned and kissed her. The complainant then told the respondent that she thought she was “really hot”. The respondent stated that this was how the physical interaction started with her, and they started kissing.

The respondent stated that they were kissing and there must have been some touching. She recalled asking the complainant to “go down” on her, referring to oral sex. She said the complainant agreed

and the two of them moved from the bedroom to the closet area. The respondent said she was wearing a dress that night, and the complainant pulled down her underwear and performed oral sex on her. The respondent said that at this point, she started “freaking out” in her head and pulled her body back from the complainant. She stated that her skirt was over the complainant’s head at this time. The complainant asked her if she was okay, to which she said, “I’m sorry, I’ve never been with a woman before.” The respondent indicated that the complainant leaned in and started kissing her again.

At this point in the interview, the respondent’s voice broke and she cried a little. The respondent suggested that she should have been more forceful instead of gentle in asking the complainant to stop.

After they kissed, the respondent remembered them being on the floor of the bathroom. She said the complainant placed her hand over the respondent’s hand and [REDACTED]. With her hand still on top, the respondent said the complainant guided the motion of their hands to masturbate the respondent. The respondent recalled that the complainant said, “come for me.” When she told the complainant that she was “coming”, she said the complainant remarked, “oh, that’s good.” The respondent recounted how the complainant was moaning at this point.

The respondent said her right hand was on her body while the other was holding herself up off the floor. She said didn’t remember touching the complainant over her pants, indicating it was possible; however, she stated she was “100% sure” she didn’t touch the complainant below her clothes. She said she may have touched the complainant’s breast.

The respondent said that she and the complainant kissed, and that the complainant then had to go to the bathroom. At this time, Witness 6 came upstairs.

The respondent stated that when the complainant came out of the bathroom, Witness 6 was there and all three began talking. She said that the complainant told them that her stomach was not feeling well. The respondent said she suggested that the complainant ate too much, and that she should throw up to make herself feel better. The respondent described how she and Witness 6 then held the complainant’s hair back while she put her fingers down her throat to induce vomiting. The respondent said the complainant didn’t vomit though and got up to wash her hand. While at the sink, the respondent said that the complainant began throwing up, which clogged the sink. The respondent went to get a trash bag to help clean up, but the complainant told her that she could do it herself.

The respondent said that they stayed upstairs and exchanged Facebook information, but she wasn't sure how long they were up there. She was also not sure how long she and the complainant were upstairs alone or how long their physical interaction took.

In describing the complainant's demeanor at this time, the respondent said she was sitting down upstairs. The respondent said that the complainant did most of the talking. When asked about the conversation, the respondent reiterated that the conversation was mostly about exchanging Facebook information. She recalled adding the complainant as a friend on Facebook and that the complainant accepted her friend request. The respondent stated that the complainant later liked some of her photos on Facebook [REDACTED]. The respondent then specified that the photos of her that the complainant liked were ones in which she was [REDACTED]. She wondered aloud if the complainant thought she had been lying about being straight.

The TIX/SHPC indicated that a witness observed the complainant to be sitting on the floor upstairs and staring off in an unengaged manner while the respondent talked with Witness 6. The respondent indicated she did not know why someone would say that the complainant was "out of it." She suggested we speak with Witness 6 to confirm that the complainant wasn't "out of it" at that time.

When asked what happened next after they exchanged social media information, the respondent stated that she went downstairs for a bit. She said that they had a buddy system because [REDACTED] told the [REDACTED] that if they were going to the after party, they should have a buddy.

The respondent said that Witness 6 was her buddy, so the respondent told the complainant that she couldn't leave Witness 6 alone. Since Witness 6 didn't want to leave, the respondent offered for Witness 6 and her to walk the complainant back to her cabin. The respondent explained that she could not remember if they ended up walking her back to her cabin though. She said that she did remember that she and Witness 6 got a flashlight from her room since the respondent's cabin was a little far away and it was dark outside.

The TIX/SHPC notes that the respondent appeared to remember some parts of the night better than other parts. When asked to describe her memory of that night and the extent to which drugs or alcohol might have impacted it, the respondent said, "I don't take drugs at all, except for alcohol." She said that "the longer the night went, the less details I remember," and that the last clear memory she had was when the complainant threw up in the sink. She could not remember whether or not she walked the complainant to her room, and that she didn't think she did, but she was not sure. She remembers getting the flashlight.

The respondent stated that she couldn't remember walking the complainant home because she had been drinking. She reiterated that she remembered talking with the complainant after she vomited

in the sink. She remembered that they added each other on Facebook and talked about LinkedIn too. She recalled that the complainant and Witness 6 had LinkedIn accounts, but she didn't.

The respondent also said that she remembers an incident that happened with one of the [REDACTED] [REDACTED] hat was very alarming, so she thought that her brain "snapped out of it" at that point in the night. After the complainant left the cabin, the respondent said a couple of people were still at the party. She remembered another [REDACTED] who appeared "very drunk" and who didn't know where her buddy was. At that time, she said Witness 6, Witness 3 and her were still with this [REDACTED]. When asked how the [REDACTED] appeared drunk, the respondent said that the [REDACTED] wanted to play "Never Have I Ever" and appeared to pass out on the couch as she talked with Witness 3 and Witness 6. The respondent estimated that she went home around "2 o'clock".

Before she left, the respondent said that she woke the other [REDACTED] up and tried to tell her that they needed to leave. The respondent explained that the [REDACTED] tried to stay in Witness 3's bedroom downstairs. She said that she said it was "not okay" for the [REDACTED] to stay in Witness 3's downstairs bedroom where the [REDACTED] was trying to get into bed. The respondent said that she and Witness 6 took the [REDACTED] outside and tried to find the [REDACTED]'s room. They looked around with the flashlight, but the [REDACTED] could not identify her room. The respondent said she took the [REDACTED] to her own room and stayed in her cabin for the rest of the night.

The TIX/SHPC reviewed the allegation again, specifically the element of sexual penetration. When asked if she touched the complainant under her clothes, the respondent said no. The TIX/SHPC indicated that it was reported that a medical exam revealed that the complainant's vagina had been penetrated. When asked about that information, the respondent said she did not know why tests found that the complainant had been penetrated. The respondent further stated that she didn't have any object with which to penetrate the complainant, explaining that she didn't even have a purse with her.

The TIX/SHPC indicated that it received information that the complainant was bleeding from her vagina the morning after the incident in question. When asked about that information, the respondent said that she did not know but found it concerning. She indicated that it was not a result of something that had happened between the two of them. She stated that the complainant did not indicate that she was in pain during their physical interaction.

The respondent stated, "I definitely did not penetrate her with any object or with my hand." She went on to say that it was possible the complainant could have been penetrated after she got back to her cabin that night. The respondent pointed out the complainant's clothes had not been removed during their physical interaction. When asked if the complainant had a roommate in her cabin, the respondent stated that everyone had roommates, though she did not recall who roomed with the complainant.

The TIX/SHPC then reviewed a brief overview of the sequence of events reported by the complainant: the complainant had been blacking in and out of consciousness while upstairs, she repeatedly vomited in the bathroom, then the respondent reportedly “rushed” her and initiated the sexual activity under investigation. The TIX/SHPC further described how the complainant recalled feeling only pain in her body, noting how she reported having blacked out during the alleged penetration. When asked if she had a response to that reported information, the respondent said “That is definitely not what happened.” She recalled specifically telling the complainant that she had never been with a woman before and that the complainant responded to her. She said the complainant stopped, asked her if she was okay, then kissed her in a gentle way to perhaps try and comfort her. The respondent reiterated that she did not see the complainant vomit before Witness 6 came upstairs. She further pointed out that she didn’t recall seeing any objects upstairs that could’ve been used to penetrate the complainant.

The respondent stated that she thought the allegation was serious. She reiterated that she did not know the complainant at all, and that their interaction was limited to that night. She said she did not believe that the complainant was crazy, but that she did not know why she had accused her of this act.

When asked if she had any additional information, the respondent said that she was “100% sure” that Witness 6 was not with her and the complainant when the two of them went upstairs. She also restated that, before their interaction on the couch, she did not remember physically interacting with the complainant.

The respondent circled back to the description of the events that occurred the night, and stated that she and another [REDACTED] who was with her saw the complainant the following day when they were walking to their rooms. The respondent indicated that the complainant said she was hungover, to which the respondent replied, “Me too,” and that was the end of their interaction.

During the interview, the respondent also described her interaction with the police. She stated that when she got a call from the police, she was concerned something like this had happened to the [REDACTED] who appeared drunk at the after party. She said that she met the police to tell them what happened with the other [REDACTED] who appeared drunk at the after party. During her conversation with the police, the respondent told the police about her physical interaction with the complainant. According to the respondent, Witness 6 called her about the interview with the police, but the respondent did not talk to her about the case because she was a witness. She said that she had called [REDACTED] about the matter and told her that the after parties were inappropriate. The respondent indicated that [REDACTED] said there would be no more after parties in the future.

When asked about her interactions with Witness 3 at the after party, the respondent stated that Witness 3 was talking to them when the complainant told her she wanted to leave the party. The respondent said that she did not remember him being by the door, and that Witness 6 did most of the talking during their interaction.

The respondent stated that her only interaction with Witness 3 was at the after party. According to her, Witness 3 was her supervisor but they did not interact much. She stated that she had not spoken to Witness 3 about the investigation.

When asked generally about her involvement in the [REDACTED], the respondent said that she had gone to some of their retreats, but she was not that active since the program was based in [REDACTED]. Since she travels often, she missed many of the events.

On 11/14/16, the TIX/SHPC received additional information from the respondent.

The day after the party, the respondent recalled seeing the complainant as they were checking out in the morning, as well as during lunch later in the day. She described how the complainant sat at the table across from her, so she was able to see the complainant socializing with the people around her. She said it appeared as though the complainant was “taking part in the normal events of the day.” She remarked that there was no sign of anything wrong.

The respondent mentioned that there were no medical facilities at the site of the conference. She expressed how, if something bad had happened, she would’ve gone to the doctor immediately.

In relation to the night of the reported incident, the respondent stated she was definitely aware that the complainant was drinking that night, but she didn’t feel or see any signs that the complainant was so drunk that she was unable to know what was going on around her. She reiterated that the complainant engaged in logical, coherent conversations. The only indication that something was wrong was when the complainant vomited. While she was vomiting, the respondent said she expressed embarrassment about the situation and didn’t want to go downstairs right away. The respondent pointed out that the complainant induced vomiting herself, meaning it wasn’t involuntary like it would’ve been if she had vomited from drinking. The respondent noted that there were no other moments when she was alone with the complainant again that night. She reiterated she didn’t remember holding the complainant by her waist.

The respondent said she recalled the complainant sitting on the floor after she vomited. She indicated it was the first sign to her that the complainant wasn’t okay. She recounted how she cleaned up the sink after the complainant vomited, which meant she wasn’t paying as much attention to her during that time. Afterwards, she said the complainant seemed coherent when they exchanged social media information. She further mentioned that the complainant wasn’t slouching

while she sat on the couch downstairs at the beginning of the after party and she wasn't lying back on the bed when they first went upstairs.

In relation to her and the complainant adding each other on Facebook that night, the respondent indicated that they were no longer friends on Facebook. She said she couldn't access any information to support her statements that they added each other or that the complainant liked any of her pictures. She further pointed out that Facebook notices don't go back that far either.

Afterwards, the respondent described the complainant as "acting really normal." She recalled offering to walk the complainant home, to which she said she was okay to walk to her room by herself because it was close-by. The respondent said she had the impression that the complainant wanted her to go back to her room with her. She expressed how she already felt uncomfortable about doing what they did upstairs because she wasn't the kind of person to hook up with someone she didn't know. She added that she was even more uncomfortable because the sexual activity happened even though she knew she didn't want to participate.

The respondent reiterated that what happened was consensual. She said the complainant was capable of giving consent.

### **Documentation**

The TIX/SHPC attached six appendices to this report, on which it relied on for its analysis of the allegation under the University's policy:

- The complainant's written impact statement. This document is attached as Appendix 1 to this report.
- The complainant's written response to the information provided by the respondent. This document is attached as Appendix 2 to this report.
- Two diagrams of the cabin in which the reported incident took place. One diagram was hand-drawn by the respondent. The second diagram is an official layout available on the conference center's website. These documents are attached as Appendix 3 to this report.
- A copy of the agenda for the [REDACTED] This document is attached as Appendix 4 to this report.
- A written statement submitted by Witness 6 to supplement their verbal statements. This document is attached as Appendix 5 to this report.
- A screenshot of a Facebook message the respondent sent the complainant, dated 08/31/16. This document is attached as Appendix 6 to this report.

The TIX/SHPC received one additional piece of relevant documentation in the form of "Discharge Instructions" issued to the complainant following her SART medical exam. Due to the sensitive and private nature of this document, the TIX/SHPC declined to attach it to this report. The

TIX/SHPC notes that the document indicated which services and tests were performed, but didn't include the results of those services and tests. The complainant submitted the document to corroborate her statement that she underwent a SART exam and that it showed that her vagina had been penetrated.

In addition to the above-listed documentation, the TIX/SHPC received three additional pieces of documentation submitted during the investigation. The TIX/SHPC received the presentation schedules, the list of participants, and a flyer for a performance group—all in relation to the

[REDACTED] These documents were found to be irrelevant to the complainant's allegations, as they made no fact in this investigation more or less likely. The documents were not attached to this report.

No additional documentation was submitted by the complainant, respondent, or any other investigative party.

### **Witness Statements**

During the interview of each witness who agreed to speak with our office, the TIX/SHPC explained the investigation process, the request for confidentiality, how their information would appear in the investigative report, that they are protected from retaliation, and that their participation is completely voluntary. After having the opportunity to ask questions about this process and the outcome, each witness identified below indicated that they understood and agreed to participate. The witnesses interviewed by the TIX/SHPC were identified verbally to each party during the final debrief interviews, and each party had the opportunity to respond to the information presented by each witness.

The TIX/SHPC conducted six witness interviews in this investigation. In addition to witnesses, the respondent identified one character witness. Since that witness wasn't identified as someone who had information about the reported incident or experienced something similar, the TIX/SHPC declined to interview them.

### **Witness 1**

Witness 1 indicated they were a [REDACTED] in attendance at the [REDACTED] during the time of the reported incident. They noted they hadn't met the respondent before, but was good friends with the complainant. The witness described how, on the final evening of the retreat, there was an "after party" hosted in the cabin of the [REDACTED]. The witness recalled arriving around one hour after it started. Upon entering the cabin, they observed the complainant, the respondent, one female [REDACTED] who they didn't know, and the [REDACTED], all talking by the front door. The witness remarked that it "seemed strange." They stated the respondent was "hanging on [the complainant]

like they were best friends." The witness decided to walk over and say hi, at which time they observed the respondent with her arms around the complainant's waist and "staring" at the complainant. As the witness introduced themselves, they noticed how the respondent was so "engrossed" with the complainant to the point where she wouldn't acknowledge the witness's presence. They described the respondent as appearing to be on drugs, noting that her behavior was "beyond drunk" as though she was "on a different planet." They observed the respondent "feeling all over" the complainant. When the witness asked the complainant about it, they said the complainant appeared uncomfortable and said she just met the respondent. The complainant told the witness she was feeling tired and wanted to go to bed. The witness described the complainant as appearing "exhausted and didn't say much. Since the complainant said she was tired and was standing by the door, the witness assumed she left. They didn't recall seeing her after that moment.

The next morning, the witness saw the complainant, who appeared "really upset." She approached the witness and "whispered" to ask them for a tampon or a pad, which the witness provided. The witness recalled the complainant saying, "I don't know why I'm bleeding" because it wasn't her time of the month to menstruate. On the bus ride to the airport, the complainant sat by herself. The witness described her as "miserable," "super detached," "super dark," "sad," "depressed looking," and observed her "curl up in a ball and lie down in her seat." The witness remarked that they knew something was "very very very wrong" and was concerned. After several days, the complainant told the witness about the reported incident. The complainant described how she felt as though she "lost control" of her body and "felt like a puppet." The complainant told the witness that the respondent and Witness 6 took her upstairs to the bathroom, where she was "violently ill" and couldn't walk. The complainant suggested she had been drugged and then the respondent "raped" her as she was going "in and out of consciousness," while Witness 6 appeared to serve as a look out so no one interrupted. The witness commented that what happened "interrupted if not irreversibly damaged [the complainant]'s career."

## **Witness 2**

The witness stated they attended the after party in the [REDACTED] during the [REDACTED] conference, which began at around 12midnight. They recalled engaging in an in depth conversation with four other attendees, during which time they noticed a group of three women going upstairs. The witness didn't know what was upstairs, but identified the complainant and the respondent as being part of the group. The third woman was speaking Spanish and appeared to be a close friend with the respondent. The witness expressed certainty that the complainant went upstairs since they were good friends and wanted to leave with her. The witness estimated that the women were upstairs for around forty-five minutes, noting that it was definitely under an hour. They recalled hearing laughing from upstairs, but not much else. They indicated they saw the complainant one more time before she left. The witness noted that none of the three women seemed

like they had too much to drink. When asked, the witness noticed a “closeness” between the complainant and the respondent, but didn’t know the nature of it and couldn’t speak to it.

### **Witness 3**

The witness indicated they attended the [REDACTED] during the time of the reported incident. They recalled the reception ended around 11:00pm, at which time they and a number of people went back to the [REDACTED]. The witness indicated that the [REDACTED] was “wall to wall” full of people and recalled that the leftover wine and beer from the reception was available to drink. For most of the time in the [REDACTED], the witness said they sat next to and spoke with the respondent on the couch. While the witness knew the complainant’s name, they indicated that they never met her face-to-face. They stated they didn’t recall seeing the complainant and the respondent interact together in the cabin and didn’t observe any public displays of affection between the two of them, as described by Witness 1. The witness stated they didn’t see any signs that the respondent was intoxicated that night, describing how she was able to engage in conversations about serious topics. They didn’t recall the respondent going upstairs that evening, noting that she was sitting on the couch for most of the time. The witness stated they didn’t enter or use the bathroom upstairs since there was one located downstairs near the bed. The witness estimated that people left their cabin at around 2:00-3:00am. They recalled the respondent and Witness 6 walked another female fellow back to her [REDACTED], but specified that it wasn’t the complainant.

### **Witness 4**

The witness indicated they attended the retreat and the after party in the [REDACTED]. They recalled the [REDACTED] had two floors, a fireplace, and there were snacks and wine available. They described it as “very crowded.” The witness stated they were not there for very long because they left early to help a friend with an unrelated situation. The witness indicated they believed the complainant was downstairs for the period of time for which they stayed in the [REDACTED]. They said they didn’t know the respondent, but knew and spoke with the complainant throughout the retreat. When asked if anything stood out during the after party, the witness commented that people definitely were drunker than they expected given the professional context of the event. The witness didn’t recall seeing the complainant at the events the day following the after party and commented that she “retreated” after the conference. They indicated they thought it was because the complainant was sick.

### **Witness 5**

The witness indicated they attended the [REDACTED] but didn’t know the complainant or the respondent. They recalled attending the after party in the [REDACTED] and seemed to recall that beer and wine were available. They recounted how they were in a conversation with a

group of four or five [REDACTED] In the group, the witness said it was all men and one female. The witness didn't recall seeing people go upstairs, but heard a group of all women in the loft upstairs for a period of time during the after party. They clarified that they didn't know who the women were though. The witness stated they saw the women come downstairs, but nothing stood out because they weren't paying close attention. The witness recalled seeing Witness 3, who was "mingling" and "socializing" with different people in the cabin. The witness stated the only part of that night that stood out was the behavior of a different [REDACTED] unrelated the incident in question.

## **Witness 6**

Witness 6 indicated they attended the [REDACTED] which was the first time she met both the complainant and the respondent. They said they attended the after party and engaged in conversation with the complainant and the respondent near the exit of the [REDACTED]. They indicated people were drinking a lot, but most of the drinking took place at the reception before the after party. The witness recalled the complainant discussing her background, [REDACTED]

[REDACTED] During that conversation, the complainant told the witness and the respondent that she was "feeling sick," which they understood to have been nausea caused by drinking too much. The witness said they recommended that the complainant induce vomiting to feel better. The witness recalled the respondent indicating she needed to use the restroom and offered to go upstairs with the complainant. The witness said they stayed downstairs and remembered specifically looking for them to see if they were still upstairs. They eventually went upstairs later to check on the complainant and respondent to see if they were okay. Upon arriving upstairs, the witness recalled seeing the respondent there at the bathroom while the complainant was "hugging the toilet." They recalled asking if the complainant was okay, to which the respondent said they were just talking. The witness said they decided to stay upstairs with the two of them, but indicated they mainly spoke with the respondent since the complainant still wasn't feeling well. They indicated the complainant expressed embarrassment about the situation, and the witness and respondent tried to comfort her. They recalled patting the complainant on her head to console her. At that time, the witness described how the complainant was sitting on the floor and seemed "pretty out of it." They said she was "sitting and staring off" as they spoke with the respondent, but didn't appear to be going in and out of consciousness. The witness said they went downstairs, hung out for a while, and then the complainant decided to leave because she "really didn't feel good." The witness suggested they and the respondent could've walked the complainant back to her [REDACTED] but couldn't recall for sure. They recalled that both the complainant and respondent weren't stumbling or slurring their words that night. When asked, the witness didn't recall observing any public displays of affection between the complainant and respondent. The next morning, the witness said they tried to talk with the complainant, but she appeared "really tired" and wasn't responsive to them.

After the [REDACTED] the witness said they spoke with the respondent. During the conversation, the respondent told the witness she had kissed the complainant while they were upstairs in the [REDACTED]. The witness explained the respondent disclosed the information after the TIX/SHPC's investigation started and after police detectives reached out about an unrelated incident that took place at the [REDACTED].

Witness 6 also provided a written summary of her recollection of the night in question to supplement her verbal statement (see Appendix 5).

The TIX/SHPC notes that no other witnesses were identified or interviewed during the course of this investigation.

## **V. ANALYSIS AND FACTUAL FINDINGS**

The following factual determinations are made using a preponderance of the evidence standard; this standard is satisfied if there is a greater than fifty percent chance, even if slight, that the allegation is true.

The TIX/SHPC's interviews with individuals each conveyed an account of, and a perspective on, one or more of the events recounted below. On various points, some of these accounts were incomplete, and some of them conflicted. The following description of events represents the TIX/SHPC's reconciliation of these competing versions.

Based on the information provided by the parties and witnesses, the TIX/SHPC found the following facts to be undisputed:

- On 04/16/16 (Saturday), the complainant and the respondent attended the events for the [REDACTED].
- At 5:00pm, the complainant and the respondent attended the [REDACTED] reception. The complainant recalled drinking one to two glasses of white wine during this reception.
- At 6:30pm, the complainant and the respondent attended the [REDACTED] dinner. The complainant recalled eating the food provided at the dinner and drinking "a couple more glasses" of white wine.
- From 8:00-8:30pm, the complainant and the respondent attended the [REDACTED] performances. The complainant didn't recall drinking any alcohol during the performance, except perhaps a residual glass of wine she didn't finish during dinner.
- From 8:30pm-12:00am, the complainant and the respondent were present for the [REDACTED] dance. The complainant recalled drinking from the open bar during this time, specifying that she continued exclusively drinking white wine. She recalled that the [REDACTED] [REDACTED] were serving the alcohol at the bar.

- During the above-listed events, the complainant and the respondent didn't recall interacting with one another.
- Over the course of the above-listed events, the complainant stated that she had been steadily eating and drinking water. By 12:00am, she indicated that she felt "pretty buzzed," but was able to carry on "coherent" conversations with her colleagues.
- At 12:00am, the complainant and the respondent went to Witness 3's cabin for an after party. They each went separately with different groups of [REDACTED]
- The complainant and respondent both recalled speaking to one another, along with Witness 6, during the after party. While the respondent stated the conversation took place on the couch, the complainant and Witness 6 stated that the three of them were standing near the exit of the cabin. During this conversation, all three of them recalled the complainant saying she wasn't feeling very well and being prompted to go to the bathroom to induce vomiting. At this time, the complainant reported feeling like "[she] couldn't make [her] body move."
- While it's disputed if Witness 6 went upstairs with them, it's undisputed that both the complainant and the respondent go upstairs to use the bathroom.
- While upstairs, the complainant and the respondent engaged in the sexual activity that is the subject of this complaint.
- After reported sexual activity, the complainant, respondent, and Witness 6 remained talking upstairs.
- While it's disputed when the complainant started vomiting, all three of them confirmed that the complainant repeatedly vomited in the upstairs bathroom.
- After talking, the three of them go downstairs. The complainant left the after party.
- The next morning (Sunday), the complainant woke up, felt "horrible", and was in "a lot of pain." She stated she experienced "profuse bleeding" from her vagina for the rest of the day. She noticed the crotch and buttocks area of her pants, blouse, and boots all had blood on them. She further noticed that her vagina was "red and swollen."
- The complainant asked other fellows for tampons or pads, noting that the bleeding was so profuse during the day that she had to use multiple pads. Witness 1 confirmed she provided the complainant a pad when she asked.
- The next day (Monday), the complainant went to see a doctor because her vagina was still bleeding. The family doctor remarked that it appeared as though an object had been used on her.
- After one day passed, the complainant called the rape/trauma center because she was still in pain and was having trouble urinating. This exam also showed that her vagina had been penetrated.
- The complainant and Witness 1 described the negative impact experienced by the complainant as a result of the reported incident.

Based on the information provided by the parties and witnesses, the TIX/SHPC found the following facts to be in dispute:

- On 04/16/16, the parties disputed the fact of sexual penetration.
  - The complainant's statements:
    - The complainant reported that she, the respondent, and Witness 6 were upstairs during the after party. She recalled lying on the bed and then going into the bathroom because she felt "very very ill." She proceeded to vomit "many times, a lot, over a long period of time." She recalled the respondent and Witness 6 observing her vomit in the bathroom.
    - After she vomited, the complainant recalled that the respondent appeared to "run across the bathroom" and began kissing her in an aggressive manner.
    - The complainant reported feeling like "something hurt" and remembered "feeling pain," but she wasn't conscious of what was happening. The complainant described this feeling as "body memory" that her vagina was penetrated.
    - The next morning, the complainant experienced "profuse bleeding" from her vagina. She noted blood on her pants, blouse, and boots.
    - The complainant underwent a SART exam, which reportedly showed that an object penetrated her vagina.
  - The respondent's statements:
    - The respondent stated she went upstairs with the complainant to use the bathroom. The respondent said she used the bathroom and, when she exited, saw the complainant sitting on the bed.
    - The respondent stated the complainant talked [REDACTED]. The respondent talked about her [REDACTED]. At the end of the conversation, the respondent said she leaned in to hug the complainant, but the complainant leaned in and kissed her.
    - They continued kissing, and the respondent asked the complainant to perform oral sex. They moved to the closet area between the bedroom and bathroom, where the complainant performed oral sex by placing her head under the respondent's skirt.
    - The respondent asked the complainant to stop, and she did. After the respondent indicated she hadn't been with another woman, the complainant leaned in to kiss her again.
    - They moved to the bathroom floor. The respondent reported that the complainant placed her hand over the respondent's hand and guided it to masturbate the respondent until she ejaculated.
    - The respondent denied penetrating the complainant and didn't remember touching the complainant's genitals over her pants either.

- After the sexual activity ended, the respondent reported that the complainant began repeatedly vomiting in the sink and toilet.
- On 04/16/16, the parties disputed the complainant's capacity to consent to the sexual activity.
  - Evidence supporting incapacitation:
    - Upon arriving at the cabin for the after party, the complainant reported feeling "very very strange." She described feeling her "consciousness going in and out," which caused her to black out or "blank" during her conversations with other [REDACTED] in the cabin.
    - Prior to going upstairs, the complainant reported she "felt like [she] couldn't make [her] body move."
    - The complainant stated, and Witness 6 corroborated, that she said she wasn't feeling well and was prompted to induce vomiting. Witness 6 stated she understood the complainant to be feeling sick due to her possible alcohol consumption. The respondent went upstairs with the complainant because she needed to go to the bathroom.
    - The complainant recalled going into the upstairs bathroom because she felt "very very ill." She proceeded to vomit "many times, a lot, over a long period of time." She recalled the respondent and Witness 6 observing her vomit in the bathroom, although the parties disputed whether it was before or after the sexual activity.
    - The complainant reported going in and out of consciousness during the sexual activity with the respondent, remembering only "black space" and "very very brief moments of lucidity." She recalled her "body memory" of feeling pain.
    - While the respondent and Witness 6 talked after the sexual activity, Witness 6 stated that the complainant was "sitting and staring off" as the witness patted her head to console her after she vomited.
    - The complainant stated the respondent and Witness 6 walked her back to her cabin because she felt "very very very dizzy," had trouble standing, and wasn't able to read the signs of the cabin numbers.
  - Evidence showing capacity:
    - The respondent described the complainant as engaging in "coherent" conversation with her and Witness 6 prior to going upstairs.
    - While upstairs, the respondent said they continued to engage in conversation.
    - The respondent stated the complainant initiated the kissing and was responsive to her request to perform oral sex and later responsive to her telling the complainant to stop the oral sex.

- The respondent further stated the complainant responded to her statements while she was masturbating the respondent, recalled the complainant saying, “Oh, that’s good” when she said she was “coming”.
  - The respondent stated the complainant engaged in coherent conversation with her and Witness 6 after she had vomited in the bathroom. She indicated the complainant even added her on Facebook.
- The parties and Witness 6 dispute the role and presence of Witness 6 during the reported incident upstairs.
  - The complainant reported that Witness 6 went upstairs with her and the respondent. This was corroborated by Witness 2, but disputed by the respondent and Witness 6. The complainant recalled Witness 6 entering and exiting the bathroom during the reported incident, but both the respondent and Witness 6 dispute this point. During its investigation, the TIX/SHPC didn’t receive any corroborating evidence to suggest that Witness 6 observed or played any role in the reported incident. Her conduct on 04/16/16 will not be addressed in the TIX/SHPC’s analysis, except as it relates to substance of the complainant’s allegations against the respondent.

**Finding:** The TIX/SHPC finds by a preponderance of the evidence that there is sufficient evidence to find a policy violation for this allegation.

### **Analysis:**

The TIX/SHPC examined three elements: (1) the respondent’s alleged penetration of the complainant; (2) the complainant’s alleged state of incapacitation; and, (3) the respondent’s knowledge of the complainant’s incapacitation.

In addition to the above-listed elements, the TIX/SHPC will also address any evidence relevant to the aggravating factors included in the complainant’s allegations: (1) that the respondent deliberately caused the complainant’s incapacitation, and (2) that the respondent intentionally took advantage of the complainant’s incapacitation. The analysis of these two factors are incorporated in the TIX/SHPC’s analysis of the three elements of the allegations.

#### **Element 1: the respondent’s alleged penetration of the complainant**

The respondent penetrated the complainant’s vagina. The TIX/SHPC reached this conclusion based on an analysis of the evidence supporting the complainant’s account.

The complainant stated that, as she was going in and out of consciousness while with the respondent, she had a “body memory” of feeling pain consistent with her vagina being penetrated. The morning after, the complainant reported “profuse bleeding” from her vagina and described

her menstrual cycle to eliminate alternative explanations as to the bleeding. The complainant further noted blood on the crotch and buttocks area of her pants, as well as on one of her boots and her blouse from the previous night. The reported penetration took place on a Saturday, and the complainant received a pelvic exam from her family doctor the following Monday. The family doctor observed that the complainant's vagina was swollen and showed signs consistent with having been penetrated by an object—an observation also made during the complainant's SART exam, according to the complainant. The complainant provided the "Discharge Instructions" for her SART exam to support her statement regarding the exam's results. While the document didn't indicate the exam's results, the TIX/SHPC considers how it lends credibility to the complainant's statements.

The evidence shows that the complainant's vagina was penetrated. The respondent denied engaging in any penetrative sexual activity and suggested the penetration could've taken place with someone else at a different time. In considering that suggestion, the TIX/SHPC notes the lack of evidence supporting an alternative explanation. The complainant's "body memory" of the penetration originated from her interaction with the respondent in the upstairs bathroom of the cabin during the after party. The TIX/SHPC further highlights that the complainant recalled going downstairs and leaving the cabin after her "body memory" of the penetration, which makes it implausible that any penetrative sexual activity took place between the time the complainant returned to her own cabin and woke up the following morning. Along similar lines, the complainant stated that she fell asleep without changing out of her clothes once she got back to her own cabin and then woke up with blood on her pants, blouse, and boots. In order for any penetrative sexual activity to have taken place after her return to her own cabin, the following would've needed to take place: the complainant and the other individual would've needed to remove or pull down the complainant's pants; would've needed to penetrate the complainant's vagina in a manner that produced swelling and bleeding yet not create a sensation or pain to register a body memory in the complainant in her cabin; the other individual, since the complainant didn't report blood on her hands, would've needed to touch or use the object to touch the complainant's blouse and boot to transfer blood to both items; and then they would've needed to pull up and re-button/zip the complainant's pants. The TIX/SHPC finds that scenario to be implausible, leaving the complainant's "body memory" of the respondent penetrating her vagina as the only plausible explanation.

Based on the above analysis, the TIX/SHPC finds the first element to be satisfied: the respondent more likely than not penetrated the complainant's vagina.

### **Element 2: the complainant's alleged state of incapacitation**

The complainant was incapacitated at the time of the reported incident. The TIX/SHPC reached this conclusion based on an analysis of (1) the evidence suggesting that the complainant was

blacking-in and –out during the penetrative sexual activity, and (2) the bodily signs of incapacitation.

During penetrative sexual activity, the complainant stated she blacked in and out of consciousness and only recalled a “body memory” of pain. The following morning, the complainant noticed “profuse bleeding” from her vagina and blood on the crotch and buttocks area of her pants from the night of the reported incident. Upon noticing those signs, the complainant “went into shock.” The TIX/SHPC considers the complainant’s limited “body memory” of pain and “shock” at the body signs of penetrative sexual activity as evidence that she didn’t understand the nature of the pain she felt in her body or the fact she was being penetrated on 4/16/16.

The TIX/SHPC considers the complainant’s bodily signs as evidence of incapacitation. Upon entering the cabin for the after party, the complainant stated she felt “very very strange” and felt her “consciousness going in and out” throughout her interactions with the other fellows. She recalled speaking with people and then experiencing black outs and blanking. During her conversation with the respondent and Witness 6 before going upstairs, the complainant reported feeling “like [she] couldn’t make [her] body move.” Witness 1 indicated the complainant later told them that she “lost control” of her body and “felt like a puppet.” The complainant told the respondent and Witness 6 that she wasn’t feeling well and needed to leave, which Witness 6 corroborated. After deciding to go upstairs to use the bathroom, the complainant stated she repeatedly vomited. The respondent and Witness 6 corroborated the repeated vomiting. The complainant then stated she went in and out of consciousness during the reported incident, only recalling “black space” and a “body memory” of pain. In describing the totality of her experience on 04/16/16, the complainant wrote, “Part of what I felt was an overwhelming disconnect between my body feelings and movements, and what my brain was thinking and what I wanted my body to do. In other words, the strangeness I felt was a profound disconnect between my thoughts and my actions [...].” The TIX/SHPC notes that loss of consciousness/awareness, repeated vomiting, and perceived lack of bodily control are bodily signs consistent with incapacitation.

The TIX/SHPC notes the different explanations for the cause of the incapacitation. The complainant stated her experience was inconsistent with alcohol-induced intoxication. She referred to her deliberate plan to drink only white wine and to balance it with a steady intake of food and water throughout the night. She further noted that she didn’t experience the spinning or dizziness typically associated with alcohol-induced intoxication. In weighing this evidence, the TIX/SHPC notes the possibility that the complainant’s alcohol intake interacted with the change in her blood pressure medication, which she had stopped only two days prior to 04/16/16. It’s plausible that the alcohol’s interaction with the change in blood pressure medication generated a reaction different than alcohol-induced intoxication.

The complainant suggested the possibility that she had been drugged, highlighting how her state of incapacitation differed from the typical signs of alcohol-induced intoxication. Further to that point, Witness 1 described the respondent as behaving as though she were under the influence of drugs, indicating the possibility that drugs were available in the cabin. However, the TIX/SHPC found no corroborating evidence for Witness 1's observation. In weighing the possibility that the complainant was drugged, the TIX/SHPC notes the absence of corroborating evidence. Specifically with respect to the respondent, the TIX/SHPC found no evidence to indicate she drugged the complainant, or that she deliberately caused the complainant's incapacitation in any other way.

Based on the evidence showing the complainant's incapacitation, the TIX/SHPC finds the second element to be satisfied: the complainant more likely than not was in an incapacitated state and unable to consent on 04/16/16.

### **Element 3: the respondent's knowledge of the complainant's incapacitation**

The respondent knew or should have known that the complainant was incapacitated on 04/16/16. The TIX/SHPC reached this conclusion based on the verbal and visible signs that the complainant was incapacitated. The evidence shows that the complainant exhibited verbal and visible signs of incapacitation before and after the sexual activity.

Prior to going upstairs with the respondent, the complainant remarked multiple times that she didn't feel well and needed to leave the after party. Both the respondent and Witness 6 recommended that the complainant induce vomiting, with Witness 6 saying they did so because they believed the complainant to be under the influence of what they thought was alcohol. While the respondent only recalled the complainant saying she was "bloated" from dinner and drinking beer, the TIX/SHPC attaches greater weight to the complainant's recollection since it's supported by Witness 6 and in light of the earlier analysis of the complainant deliberately drinking only white wine.

While upstairs with the respondent and before the sexual activity, the complainant stated she repeatedly vomited in front of the respondent. The respondent disputed this point, describing how the complainant vomited after the sexual activity. In weighing the two accounts, the TIX/SHPC attaches greater weight to the complainant's account. The TIX/SHPC considers it unlikely that the complainant neglected her sole purpose of going upstairs in the first place—to induce vomiting—until after engaging in personal conversation, kissing, performing oral sex on, and masturbating the respondent. Her demonstrated need to vomit and the fact that she felt so ill that she initially proposed leaving the after party all together suggests it's more likely that the complainant would've made the effort to promptly induce vomiting after going upstairs. Moreover, the TIX/SHPC considers the fact that the respondent denied penetrating the complainant's vagina,

when the evidence suggests otherwise. The TIX/SHPC takes into account this inconsistency when assessing the credibility of the respondent's account.

After the sexual activity and after the complainant vomited, the TIX/SHPC further notes Witness 6's description of the complainant. After joining the complainant and respondent upstairs, Witness 6 observed the complainant "sitting and staring off" as the witness patted her on the head to console her for vomiting. The TIX/SHPC considers the complainant's visibly detached and unengaged demeanor as evidence of her incapacitation visible to the respondent. While the respondent described the complainant as coherent and talking, Witness 6's direct observations corroborate the complainant's statements about her condition. The TIX/SHPC attaches additional weight to the evidence of the complainant's visibly detached and unengaged demeanor given the proximity in time to the reported sexual intercourse with the respondent.

Based on the verbal and visible signs that the complainant was incapacitated before and after the sexual activity, the TIX/SHPC finds the third element to be satisfied: the respondent more likely than not knew or should have known that the complainant was incapacitated on 04/16/16.

## **VI. CONCLUSION**

The complainant alleged that the respondent sexually assaulted her when, on 04/16/16, she penetrated her vagina while she was incapacitated and unable to consent.

The respondent stated that the complainant and her engaged in consensual sexual activity, but denied penetrating her vagina.

The TIX/SHPC interviewed six witnesses and reviewed ten documents with information relevant to this allegation. Each party had the opportunity to present evidence and identify possible witnesses. Based on a review of the evidence learned during the course of this investigation, the TIX/SHPC found that it is more likely than not that the respondent sexually assaulted the complainant by penetrating her vagina while she was in an incapacitated state and unable to consent. The TIX/SHPC finds that this allegation is **substantiated**.

## **VI. RECOMMENDED FINDINGS**

The TIX/SHPC reviewed a single claim of sexual assault-penetration. It found that there is sufficient information to find policy violation in relation to the claim. The TIX/SHPC finds that this allegation is **substantiated**.

If we may be of any further assistance in this matter, please do not hesitate to contact us.